IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1000 OF 2004.

WITH

CIVIL APPLICATION NO.1244 OF 2005.

WITH

CIVIL APPLICATION NO.4450 OF 2004.

WITH

CIVIL APPLICATION NO.3241 OF 2004.

WITH

CIVIL APPLICATION NO.2173 OF 2005.

Shri Parasmal Walchand Oswal : Appellant

versus

Mrs.Gohar M. Irani & ors. : Respondents.

Mr.Nitin P. Deshpande for the appellant and
Respondent No.1 in C.A. No.2173 of 2005.
Mr.Vasudev with Suman Jain for the applicants in
Mr.P.J.Pawar for Respondent No.9.
Mr.V.G.Mujumdar for Respondent Nos. 10 to 13.

CORAM : D.G.DESHPANDE,J.

DATED : 12th July 2005.

ORAL ORDER

1. This appeal is filed by the original plaintiff i.e. power of attorney holder of the plaintiff. The plaintiff had filed Special Civil suit No.419 of 2002 before the Joint Civil Judge, Sr.Division, Pune. It was for declaration, partition and for other reliefs. Suit came to be dismissed with costs. Thereafter power of attorney holder filed the present appeal. Original plaintiff now wants to withdraw this appeal.

2. Ordinarily the respondents cannot have any objection for withdrawal. But there are two applicants who have filed their intervention applications and they have strong objection for withdrawal of the appeal on the ground that in the aforesaid suit filed by the appellant i.e. Suit No.419 of 2002 there was Issue No.10 i.e. Whether the possession of the defendants in the suit property is adverse to the title of the plaintiff? and, the trial Court gave finding in the affirmative on that issue.

3. Both the applicants/intervenors contended that even if the suit is dismissed and this appeal is allowed to be withdrawn, this finding will be there forever and that may come in their way i.e. their rights in the property. Both of them have already filed their separate suits and both of them are not party to suit No.419 of 2002. Dattatraya Langhe was the power of attorney holder of the plaintiff/appellant. He contended that apart from being a constituted attorney he has some independent rights in the property by virtue of independent agreement and for which he has filed separate suit. Whatever those rights are on the basis of his own agreement with the plaintiff, they are unconnected with this suit and, therefore, I pass the following order :-

:ORDER:

Appeal is allowed to be withdrawn.

All the civil applications are dismissed for want of prosecution.

The order of dismissal of the suit therefore stands as it is.

The finding of the trial Court on Issue No.10 that the defendants' possession of the suit property is adverse will not come in the way of both the applicants/intervenors in their independent suits.

The applicants M/s.Summer Hill Resorts Enterprises and Summer Hill Co-op. Housing Society Ltd. against which the present appellant has filed the suit, so in that issue so far as intervenors and their rights are concerned this finding will not come in their way.

Mr.Nitin Deshpande is discharged from this appeal so far as the appellant is concerned.

[D.G.DESHPANDE]